

St. Louis City Ordinance 62679

FLOOR SUBSTITUTE

BOARD BILL NO. [92] 115

INTRODUCED BY ALDERMAN JOANNE WAYNE

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment, authorizing the Director of Airports and the Comptroller of the City of St. Louis, to execute on behalf of the City of St. Louis, a contract with Bookmark, Inc. to operate a Specialty Retail Concession at Lambert-St. Louis International Airport for a term consisting of eight contract years from July 1, 1992 until July 30, 2000 under the terms and conditions of said contract which are set forth in Section One hereof; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Section One. The Director of Airports and the Comptroller of the City of St. Louis are hereby authorized and directed to execute on behalf of the City of St. Louis, a contract with Bookmark, Inc. to operate a Specialty Retail Concession at Lambert-St. Louis International Airport to read substantially in terms as conditions as follows:

AIRPORT NUMBER

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(SPECIALTY RETAIL - BOOK)

THIS AGREEMENT, made and entered into as of the day of , 1992 by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and Bookmark, Inc. (the "Concessionaire").

WITNESSETH, That:

WHEREAS, the City now owns, operates and maintains an international airport known as "Lambert St. Louis International Airport", located in the County of St. Louis, Missouri ("Airport"); and

WHEREAS, a Specialty Retail concession at the Airport is essential for proper accommodation of the public;

WHEREAS, the City has determined that it is in the public interest for the following objectives to be met in the provision of a Specialty Retail concession:

- to provide first-class retail concessions that meet airport user needs and add value to other airport and airline services;
- to provide specialty retail products and a high level of service at prices that are attractive to airport users and competitive with local prices;
- to provide retail concessions that are operated by well trained, efficient and pleasant staff;
- to improve the appearance and design of retail facilities;
- to expand the volume of retail sales through planned promotional campaigns;
- to be responsive to FAA goals for Disadvantaged Business Enterprise participation in retail concessions.

WHEREAS, the City has advertised and received competitive bids for the right to manage and operate Specialty Retail concessions at the Airport, and by this process the City has determined that Concessionaire is a qualified operator of this service and has submitted a bid deemed advantageous to the public and the City;

NOW, THEREFORE, for and in consideration of the promises, and of the mutual covenants and agreements herein contained, and other valuable considerations, the City and Concessionaire agree as follows:

ARTICLE I

Section 101. Definitions. The following words and phrases shall have the following meanings:

"Agreement" shall mean this document and any amendments thereto, duly approved by the City.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be the

Concessionaire's point of contact with the Airport on all issues related to this Agreement.

"Applicable Percentage Fee" shall mean the product of (i) the Gross Revenue for the category of product sold for the appropriate period multiplied by (ii) the percentage set out in Article IV hereof for the product category.

"Build-Out or Build-Out Costs" shall mean costs incurred for the demolition/re development of existing improvements and construction of new Improvements to the Premises, including furnishings, fixtures and finishes including Removable Fixtures, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest during construction and overhead of the Concessionaire.

"City" as stated in the preamble hereof.

"Concessionaire" as stated in the preamble hereof.

"Contract Year" shall mean one of eight (8) consecutive twelve month periods commencing July 1, 1992.

"Director" shall mean the Director of Airports of the Airport Authority of the City of St. Louis, and incorporates the granting of approvals requirements of Section 1214 hereof.

"Disadvantaged Business Enterprise" or "DBE" shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are rebuttably presumed to be women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

"Downtown" shall mean the central business district of the City of St. Louis. For the purposes of this Agreement, the comparable Downtown locations shall be St. Louis Union Station retailers. For products without a comparison in the

specified locations, the comparable location shall be within the local area and approved in writing by the Director.

"Gross Revenue" shall mean the gross receipts from all sales made and services performed for cash or credit on the Airport, regardless of the point of origin or delivery of the order, and any other revenue of any type arising out of or in connection with Concessionaire's operations on the Airport, whether performed by the Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise. The following may be excluded or deducted, as the case may be, from Gross Revenues:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for returned products purchased at the Airport;
- the value of any supplies or equipment exchanged or transferred from or to other locations of Concessionaire's business not made for the purpose of avoiding a sale at the Airport;
- receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- the sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.

"Improvements" shall mean all constructions and fixtures built or erected by the Concessionaire and forming a part of and which are permanently affixed or attached to any portion of Airport real property or improvements.

"Premises" shall mean a location or locations described in Section 201 that has or have been designated by the City for the sale of Concessionaire's products and for other uses herein specifically provided for.

"Refurbishment or Refurbishment Costs" shall mean costs incurred to upgrade the Premises and return the Premises to original condition, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of improvements, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest during construction and overhead of the Concessionaire. "Removable Fixtures" shall mean all furnishings, equipment and fixtures installed by the

Concessionaire, that are not permanently affixed to any wall, floor or ceiling in the Premises.

"Specialty Retail" shall mean a type of retail concession that is characterized by its offering of a deep product assortment within a single product category.

"Unamortized Investment" shall mean the depreciated value of Concessionaire's investment in Build-Out Costs less the cost of Removable Fixtures. The Build-Out Costs shall be fully amortized on a straight-line basis over the term of the Agreement.

ARTICLE II PREMISES

Section 201. Premises. City hereby permits Concessionaire to use at the Airport the Premises as described on Exhibit "A," attached hereto and made a part hereof. The rights granted in Section 202 hereof may be exercised only on the Premises.

The lines of demarcation between the Concessionaire and other concessionaires or tenants shall be determined by the Director.

The Director shall have the right to add, substitute or relocate portions of the Premises upon reasonable notice to the Concessionaire. Any relocation of shop space will be reasonable in regard to the selection of substitute space that is as near equal as possible with respect to exposure. If such relocation is necessary, the City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from the relocation.

Section 202. Rights. City hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the right, license and privilege to operate a Specialty Retail concession within the Premises. These rights shall include the right to sell all types and varieties of products from the product category listed on Exhibit "B."

Concessionaire is not granted the right to offer for sale any other merchandise or services. Any additional merchandise categories may be added only following the written approval of the Director.

Other concessionaires may be authorized under their concession agreements to offer for sale related and/or same products that may create indirect competition for the Concessionaire. However, the City does not envisage, during the term hereof, to grant the same concession rights to any other concessionaire.

The Concessionaire is hereby required to stock and offer any items that the Director may deem desirable to the public convenience and comfort.

Section 203. Limitation of Rights. Concessionaire shall have no right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 202 are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale thereof immediately and not later than upon receipt of written notice from the Director.

This Agreement grants no real or implied rights to any concession privileges on the Airport other than in the terminal building and concourses.

Section 204. Access. Subject to Section 701 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises, for the Concessionaire's employees, agents, guests, patrons and invitees.

ARTICLE III

TERM

Section 301. Term. The term of this Agreement shall consist of eight (8) Contract Years. The term shall begin on July 1, 1992 and end June 30, 2000 unless sooner terminated in accordance with other provisions of this Agreement.

Section 302. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

ARTICLE IV

FEES AND PAYMENT

Section 401. General. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 402 and 411, and the utilities described in Section 704 of this Agreement, without demand during the term of the Agreement.

Section 402. Concession Fees.

(a) The Concessionaire agrees to pay for Contract Years One through Eight a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or the Applicable Percentage Fee for the product category as set out below.

Contract Years	Minimum Annual Guarantees
- Contract Year One	\$ 58,120.00
- Contract Year Two	\$ 65,281.00
- Contract Year Three	\$ 72,443.00
- Contract Year Four	\$ 79,604.00
- Contract Year Five	\$ 86,766.00
- Contract Year Six	\$ 93,927.00
- Contract Year Seven	\$101,089.00
- Contract Year Eight	\$108,250.00
Product Category	Product Percentage Fee
Books, Cards & All Other Items	10%

(b) The Minimum Annual Guarantees shall be reduced by a maximum of 25% should enplaned passengers fall by at least 25% or more in a period of up to twelve (12) months after Contract Year One. The base year for enplanement comparisons is Contract Year One. Enplanement comparisons for periods of less than twelve months shall be made only on the basis of comparing the same months of the comparison period to the base year (e.g., a comparison period of May - November must be compared to the months of May - November of Contract Year One). Enplanement numbers used for comparisons shall be taken from the statistics recorded by the City. This adjustment shall be subject to the following limitations: (1) this adjustment will take effect immediately following the period in which the entire 25% reduction in enplanements is attained, (2) this adjustment applies only to periods subsequent to the entire 25% decline in enplaned passengers and (3) this adjustment will be offset proportionally to 100% of the applicable Contract Years' Minimum Annual Guarantees for Contract Years following enplanement increases above 75% of Contract Year One enplanements.

An example of this adjustment is as follows. Enplanements in the first six months of Contract Year Two decrease to 65% of enplanements in the first six months of Contract Year One. This will cause a maximum of a 25% reduction in the Minimum Annual Guarantee for the remaining months of, and months subsequent to, Contract Year Two. Enplanements in Contract Year Three then increase to 85% of Contract Year One enplanements. This will cause the Minimum Guarantee for Contract Year Four to increase to 85% of the Minimum Annual Guarantee for Contract Year Four.

Section 403. Payment. Payments for each month of Contract Years One through Eight shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year, and (b) paid on or before the 15th day of the second and each succeeding month an amount equal to the Applicable Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year.

Section 404. Reports.

(a) Concessionaire shall submit to the City by the 15th day of the second and each succeeding month of the term hereof, one copy of an accurate statement of Gross Revenue. This statement must show Gross Revenue itemized by the Applicable Percentage Fee product category for each shop (if more than one shop) within the Premises and certified as accurate by an officer of Concessionaire. The final statement of Gross Revenue will be due by the 15th day of the month following expiration of this Agreement. The City reserves the right to use these statements of Gross Revenue as a source of information to bidders in a future solicitation for bids for this concession

(b) The Concessionaire shall submit an audit report of Gross Revenue within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant licensed to do business within the state of Missouri. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue in the product category, (ii) the calculation of the total amount payable to the City based upon accumulated Gross Revenue for the Contract Year and the product percentage fee, and (iii) the aggregate amount attributable to DBE participants, if any. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.

If through such audit report, it is established that additional fees are due the City, the concessionaire shall pay such additional fees to the City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that the Concessionaire has overpaid the City, then such overpayment from the Concessionaire shall be credited to the fees and charges next thereafter due from the Concessionaire or paid to Concessionaire after the last Contract year.

(d) Within thirty (30) days after the close of each Contract Year, the Concessionaire shall provide the City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year (except the last Contract Year).

Section 405. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of 1 1/2% per month if same is not paid and received by the City on or before the 15th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 406. Performance Bond. The Concessionaire agrees to furnish a bond to the City in the principal amount of one-half the Minimum Annual Guarantee for Contract Year One. Such bond will guarantee the payment of the Concession Fees and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the term hereof. The City may agree to another form of deposit which will provide equal protection of the City's interest. If the City cashes the Performance Bond, the Concessionaire agrees to furnish a replacement bond in the same principal amount within 30 days.

Section 407. Prompt Payment of Taxes and Fees. Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and

agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 408. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the Improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 409. Accounting Records and Reports. Concessionaire will during the term hereof make available in the St. Louis area true, accurate, complete and audit-able records of all business conducted by it at the Airport. Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors.

Section 410. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts at any time for the purpose of verifying the Gross Revenue hereunder. If as a result of such audit(s) it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Revenue reported by the Concessionaire and Gross Revenue determined by the audit, the cost of the audit shall be borne by the Concessionaire.

Section 411. Additional Fees, Charges and Rentals.

Concessionaire will pay additional fees, charges and rentals under the following conditions:

- If the City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse the City.
- If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each

and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rental, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between parties hereto, any receipt showing the payment of any sums or sum by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 412. Notice, Place and Manner of Payment. Payments will be made at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the City may hereafter notify Concessionaire and will be made in legal tender of the United States.

Section 413. Employee Fidelity Bonds. Adequate employee fidelity bonds will be maintained by the Concessionaire for all employees who handle money.

ARTICLE V

CONCESSIONAIRE'S OPERATIONS

Section 501. Standards of Service. The Concessionaire covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class Specialty Retail concession serving the needs of all users of the airport, and offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon the Concessionaire and the City. The Concessionaire shall handle quality products and shall equip, organize, put into service and manage efficiently the Specialty Retail concession to provide service with a clean, attractive and pleasant atmosphere.

Section 502. Hours of Operation. The minimum hours of operation for serving the public shall be thirty (30) minutes before departure of the first scheduled flight each day and until the departure of the last flight out each evening. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 503. Pricing.

(a) The Concessionaire agrees to ensure that all prices are attractive to the public and are no more than 10% greater than prices charged for identical products found in comparable Downtown locations; however, books and cards containing selling prices printed by the publisher are excluded and must be sold for the published prices or the prices charged Downtown if Downtown prices are greater than the published prices. For the purposes of this Agreement, the comparable Downtown location shall be St. Louis Union Station retailers. For products without a comparison in the specified locations, the comparable location shall be within the Downtown area and approved in writing by the Director.

(b) The Concessionaire submitted at time of bid a complete list of all products proposed to be sold in the allowable product category. This list shall contain the current Downtown price comparisons, including the name of the comparison Downtown retailers, and proposed selling prices that comply with paragraph (a) of this Section for a minimum of 25% of the products proposed to be sold within the Product Category listed on Exhibit "B." The Concessionaire shall not include in its comparisons books and cards if these products are sold for the publisher printed prices on the products. This exception does not apply to any other products. The proposed prices shall not be implemented until approved in writing by the Director. The award of the bid to Concessionaire does not imply approval of Concessionaire's proposed price list.

(c) The Concessionaire shall submit in writing to the Director every six (6) months beginning October 1, 1992 a list of ten (10) products and a comparison of Concessionaire's prices and Downtown prices. The purpose of this comparison is to monitor the Concessionaire's prices in comparison to Downtown prices. The products selected for this comparison shall be subject to the prior agreement of the Concessionaire and the Director, and shall change only following a subsequent agreement between the parties. This comparison may include any products deemed necessary by the Director.

(d) The Concessionaire shall not increase any prices without the prior written approval of the Director. The Concessionaire's prices shall be subject to review for increases only once per year unless agreed to the contrary in writing by the Director. The Concessionaire's prices may normally only be increased following substantiation of cost price movements from vendors and a comparison to Downtown prices that shows that Downtown prices have increased.

(e) The Concessionaire shall annually prepare a complete schedule of all products and prices including a comparison to Downtown prices for a

minimum of 25% of the products sold within the Product Category listed on Exhibit "B." The Concessionaire shall not include in its comparisons books and cards if these products are sold for the publisher printed prices on the products. This exception does not apply to any other products. This schedule shall include a short description of all products and be filed in the Airport Properties Department. Any of Concessionaire's prices found to be more than 10% greater than Downtown prices shall be reduced to no more than 10% greater than their Downtown comparisons. The Director reserves the ability to independently compare the Concessionaire's prices to Downtown prices and require the Concessionaire to reduce prices based on its comparisons. All new products and prices must be included in the complete schedule of all products and prices and must be submitted in writing by the Concessionaire and approved in writing by the Director. The proposed prices for these products are subject to all pricing requirements specified in this Section. The Concessionaire shall give written notice to the Director of all products it intends to delete from this schedule. The Director reserves the right to deny the Concessionaire permission to delete any product from this schedule. Product additions and deletions may be proposed at any time.

(f) The Concessionaire submitted at time of bid a proposal for its implementation of all pricing requirements of this Section. This proposal shall clearly indicate that it is the Concessionaire's responsibility to ensure compliance with the pricing requirements of this Section. This proposal must be approved in writing by the Director.

Section 504. Promotion.

(a) Concessionaire covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method.

(b) The Concessionaire submitted at time of bid a proposed promotion plan for the first Contract Year of the type and timing of sales promotion it intends to implement to publicize and promote the Specialty Retail concession and increase sales. This plan shall include scheduled seasonal, theme, special event and general promotions. Opening of a shop shall be the subject of special promotions. The Concessionaire shall indicate whether or not the increases in sales resulting from the promotion plan are included in gross sales estimates. The Concessionaire shall submit an update of its promotion plan 60 days prior to each Contract Year.

(c) The Concessionaire may offer a discount to its employees or those of its subcontractors, the employees of the City or any of the City's tenants at the Airport, and to volume purchasers or other special categories of customers. Said discounts shall not exceed ten percent (10%) except to employees of Concessionaire, which shall not exceed twenty (20%). Discounts to employees of the City and employees of other tenants at the Airport (other than Concessionaire's employees) must be on an equal and nondiscriminatory basis. The Concessionaire must maintain records of all employee discounts given and produce these records to the Director upon request.

Section 505. Merchandising. The Concessionaire shall arrange products in each shop within the Premises in such a manner that will maximize overall sales and Gross Revenue. The Director may require the Concessionaire to make specific changes to product locations and/or visibility if such efforts are not being effectively made by the Concessionaire.

Section 506. Personnel.

(a) The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Specialty Retail concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

(b) Employee parking will be offered as available in the Airport Employee Parking Lot at established rates.

(c) The Concessionaire submitted at time of bid a proposed staffing plan. This plan shall, at a minimum, list the number and hours of staff to be provided, the rationale by which staffing levels are determined and details of training. The number of staff provided by the Concessionaire shall be subject to the initial and subsequent approvals of the Director, and all changes in staff numbers must be approved by the Director. The Director may require an increase in the number of staff if the Director determines that the Concessionaire is not

providing staff in adequate numbers to provide a high level of service and maximize sales.

(d) The Concessionaire acknowledges and agrees that it will conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint if required by the Federal Aviation Administration (FAA) and/or the Airport. The Concessionaire recognizes and agrees that the security requirements may change and Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and/or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR 107 (1988) or other applicable law or regulation and shall promptly be reimbursed to the City by the Concessionaire.

Section 507. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced managers who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 508. Deliveries. The Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of the Concessionaire and not the Airport. The Concessionaire shall only use delivery carts equipped with pneumatic tires and rubber bumpers. Carts shall not have any exposed brackets or bolts.

Section 509. Record Keeping. The Concessionaire agrees to provide for the collection of all monies and provide accounting, audit and reports of Gross Revenue as required by Article IV of this Agreement. In addition, the Concessionaire shall ensure that a point of sale system is provided in all facilities which is capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s), if any, for each facility under this Agreement (these records are to be retained by the Concessionaire).

Section 510. Transition Period.

(a) During the transition of the existing Specialty Retail concession from the previous concessionaire, if applicable, the Concessionaire shall use its best efforts to assure a smooth transition. The Concessionaire agrees to closely coordinate the planning and execution of the transition with the Director. All operations during the transition shall be confined to the Premises.

(b) The Concessionaire understands that it is not subject to any requirement to buy out the improvements investment or inventory of the previous concessionaire.

Section 511. Operation.

(a) Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, the Concessionaire will provide and is responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.

(b) The City shall not be responsible for any goods, merchandise or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of the City.

Section 512. Communication.

(a) The Concessionaire's local manager shall schedule quarterly meetings with the appropriate representative of the Airport Properties Department to discuss sales and revenue performance, operational programs, merchandising, planned and approved construction/renovation and any other relevant issues which may adversely affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

(b) The Concessionaire shall be responsible for notifying the Airport Properties Department of any problem which reduces service levels or sales or in any way impairs the Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 513. Adult Materials. All adult materials, as defined by the Director, will be handled in a discrete manner so as to not offend the public. (a) Books will be placed on the highest display rack and their covers, except for names, will be hidden. (b) Cards will be placed in the highest rack and their pictures hidden from view. (c) Other materials will be handled as prescribed by the Director. (d) The Concessionaire agrees to remove all adult materials which the

Director requests it to remove, and the Concessionaire will not sell such materials again after it is ordered removed by the Director.

ARTICLE VI IMPROVEMENTS AND ALTERATIONS

Section 601. Construction by Concessionaire.

(a) The Concessionaire takes the Premises "as is" and agrees, at the Concessionaire's sole cost and expense, to ("Build-Out") demolish existing improvements as required and design, erect, install, construct, equip and furnish the Improvements in the Premises in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VI.

(b) The Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director, and the schedule set out below. Any deviation from this schedule must be approved in writing by the Director.

- Submit a signed tenant construction or alteration application (TCA) including complete construction drawings and specifications as required by Section 603 to the Airport Properties Department not more than 30 days following full execution of the Agreement by the City.

- Submit a St. Louis County building permit number not more than 30 days following submission of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved).

- Submit the contractor's liability insurance certificates and performance and payment Bonds required by Sections 604 and 605 to the Airport Properties Department not more than 45 days following TCA approval by the Airport Properties Department.

- Submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department as required by Section 606 not more than 60 days following approval of the contractor's liability insurance certificates and performance and payment bonds by the Airport Properties Department.

(c) In the event the Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection,

Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and the Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and the Concessionaire. The Concessionaire shall not be required to perform without consent any work relating to asbestos or PCB.

Section 602. Cost of Improvements. In connection with the Concessionaire's performance under Section 601 of this Agreement, the concessionaire shall cause to be expended for Build-Out Costs not less than \$120,000.00 (One-Hundred Twenty Thousand). The Concessionaire shall complete such Improvements in accordance with all requirements of this Article VI.

The Concessionaire shall furnish the Director with satisfactory proof of the Build-Out Costs within sixty (60) days following completion of work to the Premises. This proof of costs must include, at a minimum, an itemized account of all included costs, supported by invoices and canceled checks and certified as accurate by an independent Certified Public Accountant. The Concessionaire shall provide to the Director any other proof necessary to satisfy the Director.

The Concessionaire is encouraged by the City to productively expend the entire amounts obligated to Build-Out Costs, but in the event the Concessionaire's actual expenditures are less than the total of \$120,000.00 (One-Hundred Twenty Thousand), the difference shall be an item of additional rent paid to the City within thirty (30) days after the receipt of an invoice for such difference from the City.

Section 603. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 604. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands,

a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director.

Section 605. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1986 as amended. Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 606. Certificates of Completion. Upon the completion of the Improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 607. Signs.

(a) The Concessionaire shall not, without the prior written approval of the Director erect, maintain or display any signs on the Premises. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of Specialty Retail concession services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

(b) The Concessionaire shall be responsible for the cost of any modifications to airport directory and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 607.

(c) Prior to the erection, construction or placing of any sign, the Concessionaire shall submit to the Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any

conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.

(d) The Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its Specialty Retail concession services. The Concessionaire will not place any signs outside of the Premises.

Section 608. Title to Improvements and Fixtures. All Improvements constructed or placed in the Premises by the Concessionaire that are not Removable Fixtures, and all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in the City upon expiration or earlier termination of this Agreement; subject, however, to the Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with the Agreement.

All Removable Fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the completion of the Build-Out of the Premises, a list of such Removable Fixtures shall be submitted in writing to the Director by the Concessionaire for the Director of Airport's approval, and such list shall be periodically updated by the Concessionaire.

The City reserves the right and the Concessionaire agrees that the Director may require the Concessionaire to remove any or all Improvements and structures and restore the Premises to their original condition. The Concessionaire agrees to bear all costs of such removals and restorations.

Section 609. Alterations and Refurbishment.

(a) The Concessionaire shall have the right, without cost to the City, to construct additional Improvements to or in the Premises, provided however, that they shall be subject to all the requirements of this Article VI.

(b) In connection with the Concessionaire's further performance under Section 601 of this Agreement, the concessionaire shall perform a complete Refurbishment of the Premises not later than the end of the fifth Contract Year and expend for Refurbishment Costs not less than \$8,000.00 (Eight-Thousand). The Concessionaire shall complete such refurbishment in accordance with all requirements of this Article VI, including the proof of costs and the payment of the difference between actual expenditures and obligated expenditures to the

City as provided in Section 602. The Director reserves the right to specify the actual content of the refurbishment to be performed by the Concessionaire to address the requirements of the Premises at that time.

Section 610. Reimbursement of Build-Out Costs.

In the event of relocation of the Premises by the City, the City shall pay to the Concessionaire, less any amounts due the City from the Concessionaire, the Unamortized Investment Concessionaire has made in Improvements to the relocated Premises or portions thereof. The City shall be entitled to inspect the Improvements, and if this inspection reveals missing or damaged items, the Unamortized Investment shall be reduced by an amount equal to the cost of the replacement or repair of missing or damaged Improvements. Title to the Improvements shall pass to the City immediately upon payment of the Unamortized Investment.

ARTICLE VII

USE OF PREMISES

Section 701. Compliance with Laws and Regulations.

Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Section 702. Repairs and Maintenance. Concessionaire will provide and pay for all repairs and maintenance of the Premises, except the following which shall be the responsibility of the City:

- A. The structural components of the building.
- B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

The Concessionaire will perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following

list includes certain functions but the Concessionaire's responsibilities are not limited to those functions:

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire.
- C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). The Concessionaire may not dispose of any such items in the public areas. This may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install same and to abide by these requirements. The Concessionaire will inform the Airport Properties Department of its methods of handling and disposal of trash, garbage and refuse.
- F. Confine all handling and holding of Concessionaire's property to the premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all claims or causes of action arising out of the closing of any right-of-way.

Section 703. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations

as is reasonably practicable) to enter upon and in the Premises for the following purposes:

A. To inspect such premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.

B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after the City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse the City for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 704. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Space. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of an electric meter and socket and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to, deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire in damages or otherwise for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

ARTICLE VIII

LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 801. Liability Insurance. Concessionaire, at its expense, at all times during the term hereof, shall cause the City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement both on the Premises and the Airport under the following types of coverage:

A. General Comprehensive

B. Automobile (all vehicles)

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$1,000,000 comprised of such primary and excess policies of insurance as Concessionaire finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as an additional insured is not intended to, and shall not, make the City a partner or joint venturer with Concessionaire in its operations hereunder.

The Concessionaire will maintain, and upon request furnish evidence to the City, adequate provisions for Worker's compensation Insurance, Social Security and Unemployment Compensation at statutory limits and to the extent such provisions are applicable to the Concessionaire's operations hereunder.

Section 802. Property Insurance. Concessionaire will provide fire and related insurance coverage for the full value of the Improvements and equipment existing or installed on the Premises.

Section 803. Damage or Destruction of Terminal Building. The building in which the Premises are located will be insured by the City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be uneconomically repairable, the City may terminate this Agreement by written notice to the Concessionaire. All rental payments will cease as of the date of the destruction or damage.

If the building is repairable the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities during the repair and Concessionaire will pay rental for the temporary facilities.

Section 804. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Concessionaire in this Article, shall be delivered to the Director in form and content satisfactory to the City.

At least 15 days prior to the expiration of any such policy, Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director.

Section 805. Conditions of Default. This Agreement shall be considered in default when Concessionaire fails to comply with any of the conditions of this Agreement.

Section 806. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts or omissions of Concessionaire's officers, agents, employees, contractors,

subcontractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of Lambert-St. Louis International Airport. The Director or his designee shall give to Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this agreement.

Section 807. Adjustment of Claims. Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Concessionaire under this Agreement. Concessionaire agrees that all such claims, whether processed by Concessionaire or its insurer either directly or by means of an agent, will be handled by a person with a permanent office in the St. Louis metropolitan area.

Section 808. Occupancy of Premises. The Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

ARTICLE IX

ASSIGNMENT AND SUBLETTING

Section 901. Assignment and Subletting.

(a) Concessionaire shall not assign this Agreement without first obtaining written approval of the Director and Airport Commission. At least 90 days prior to any contemplated assignment of this Agreement, Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective unless Concessionaire shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Agreement.

Any such transfer or assignment without the consent of the City shall constitute a default on the part of the Concessionaire under this Agreement. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 90 days after notice thereof given in writing to exercise the City's option hereby given to end the term on a date which shall

not be sooner than forty-five (45) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

(b) Concessionaire shall not sublet the Premises.

ARTICLE X

TERMINATION OF AGREEMENT IN ENTIRETY

Section 1001. City's Right to Terminate. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a default.

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, Concessionaire shall:

1. apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
2. file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
3. make a general assignment for the benefit of creditors;
4. file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
5. file an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the

application of a creditor, adjudicating Concessionaire a bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days;

6. fail to maintain the quality of products or services and prices to the satisfaction of the Director as required hereunder;

7. fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;

8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire and is not removed or enjoined within thirty (30) days;

9. desert, vacate or discontinue all or a portion of its operation of the Premises which, in the opinion of the Director, results in a failure to provide the public and others the service contemplated hereunder;

10. fail to meet the DBE goal as described in Section Article XI of this Agreement;

11. fail in the performance of any covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1003 hereof.

Failure of the City to take any authorized action upon default by Concessionaire of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

Section 1002. Concessionaire's Right to Terminate. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof for the following causes:

A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.

B. If the City shall have abandoned the Airport for a period of at least 30 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. If the City shall have failed in the performance of any specific covenant within the control of the City and required by this Agreement to be performed by the City.

Section 1003. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than 45 days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated; and no such termination shall be effective if such cause of default by its nature cannot be cured within such 45 day period, and if the party at default commences to correct such default within said 45 days and corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by the City upon the default of payment of charges and fees as provided herein, then Concessionaire agrees also to pay a reasonable attorney's fee.

Section 1004. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Concessionaire specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XI

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1101. Compliance.

(a) The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than 30% of the total Gross Revenues earned in the exercise of the concession rights granted in Section 202. This goal remains in effect throughout the term of the Agreement. Credit toward the DBE

goal will only be given for the use of DBE's certified by processes acceptable to the Director. The Concessionaire submitted at time of bid a DBE participation plan which detailed the method(s) and percentage of DBE participation it offers in the performance of this Agreement. This DBE participation plan must be approved in writing by the Director before it may be implemented. The Concessionaire is obligated to meet the greater of the minimum 30% DBE participation or the amount of participation detailed in its DBE participation plan as approved by the Director.

(b) It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of agreements as defined in 49 CFR 23.5. Consequently, this Agreement is subject to 49 CFR Part 23, as applicable.

The Concessionaire hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23, 49 App. § 2210 (a) (17), on the grounds of race, color, national origin or sex.

Concessionaire hereby assures that it will include the above clauses in all subcontracts and cause subcontractors to similarly include clauses in further subcontracts.

(c) Substitutions of DBE's must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. The Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, the Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if the Concessionaire has made acceptable good faith efforts. The Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

(d) The Concessionaire shall operate its Specialty Retail concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, Participation by Minority Business Enterprise in Department of Transportation Programs, and 49 App. § 2210 (a) (17), as applicable and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the

above covenants, the City shall have the right to terminate this Agreement and to re-enter and repossess the Premises thereon and hold the same as if this Agreement had never been made or issued.

Section 1102. Noncompliance. Concessionaire understands that any substantial deviation from Section 1101, as determined by the City, may subject Concessionaire to termination in accordance with the procedure established in Section 1003.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 1201. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to Concessionaire shall be sent by certified mail, return receipt requested addressed to Bookmark, Inc., P.O. Box 3026, St. Peters, MO, 63376. A copy of all notices shall also be mailed to the Airport Properties Department.

The parties or either of them may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Concessionaire or said Director.

Section 1202. Non Discrimination and Affirmative Action Program.

A. The Concessionaire hereto understands and agrees that the City in operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. Concessionaire hereby agrees that his premises shall be posted to such effect as required by such regulation.

B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade

or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.

D. Concessionaire agrees that should it be determined by the Concessionaire or City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of his program.

E. Concessionaire will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Whenever the Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within 10 days.

H. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and the City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

I. The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it will require that its covered sub-organizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1203. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1204. Force Majeure. Neither the City nor Concessionaire shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1205. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1206. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the premises.

Section 1207. Operation and Maintenance of Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the

City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1208. Title to Site. The premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1209. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1210. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1211. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri.

Section 1212. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1213. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1214. Withholding Required Approvals. Whenever the approval of the City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of the City is required, the approval must be in writing and the approving official is the Director or the person duly designated to perform one or more of the Director of Airport's duties under this Agreement.

Section 1215. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

Section 1216. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1217. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 1218. Not a Lease. This Agreement is not a lease and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder, and the Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1219. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1220. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and/or other concessionaire and the Concessionaire agrees to be bound by such decision. All determinations by the Director are final.

Section 1221. Prevailing Wage. The Concessionaire agrees to pay all employees not less than the prevailing hourly rate of wages and fringe benefits as determined by the United States Secretary of Labor, or its authorized representative, in accordance with prevailing rates in the locality of the metropolitan St. Louis area pursuant to 41 U.S.C. 351 et seq., as amended except for any person engaged in an executive, administrative or professional capacity.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year first above written.

THE CITY OF ST. LOUIS

Director of Airports and Commission Chairman

Date

APPROVED AS TO FORM ONLY

City Counselor

Date

City of St. Louis

Register,

Date

City of St. Louis

COUNTERSIGNED

Comptroller,

Date

City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on the day of , 1992.

Secretary,
Date
Board of Estimate & Apportionment

BOOKMARK, INC.

Title:
Date:

ATTEST

Title:
Date:

EXHIBIT "A"
(Premises)

EXHIBIT "B"
Product Category

Books and Book Related Items (includes book accessories and cards). No less than 96% of the space shall be allocated to books.

Section Two. This being an Ordinance necessary for the immediate preservation of the public safety and welfare, it is hereby declared to be an emergency measure within the meaning of Article IV, Section 20, of the City Charter and shall become effective immediately upon its approval by the Mayor.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
06/26/92	06/26/92	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE

07/10/92			07/17/92	07/17/92
ORDINANCE	VETOED		VETO OVR	
62679				